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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/536,975 | 12/20/2005 | Albert Wauters | 6.70.1068 PCT/IB-US | 4717 |

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LEVY & GRANDINETTI
P. O. Box 18385
Washington, DC 20036-8385

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| EXAMINER |
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NICOLAS, FREDERICK C

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| ART UNIT | PAPER NUMBER |
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3754

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11/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---|---------------------------------------|--|
| Office Action Summary | Application No. 10/536,975 | Applicant(s) WAUTERS ET AL. | |
| | Examiner Frederick C. Nicolas | Art Unit 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 15, 19-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 15, 19-21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 18-21 is withdrawn in view of the newly discovered reference(s) to Alexander et al. 5,435,464. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,6,19-21,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierre FR2138685 in view of Alexander et al. 5,435,464.

Pierre discloses a dispensing device for a bag containing an alcohol beverage as seen in Figure 6, which comprises a hollow elongated member (16) adapted to extend into the bag (1), the hollow elongated member has an end portion having an opening for receiving the beverage at a first temperature during a dispense cycle as seen in Figure 1, the hollow elongated member further including at least one lateral aperture (44) therein spaced apart from the opening to receive the beverage into the member during the dispense cycle, the at least one lateral aperture is provided for receiving a beverage at a second temperature. Please note that product within the container will have different temperature throughout its levels as admitted by applicant to be common in the

Art Unit: 3754

art. Therefore, it is inherent that the temperature of the product at the at least one lateral aperture will be different from the opening at the end portion and be mixed during dispensing. Pierre lacks an interface base plate extending between the end portion and the bag to isolate the bag from the end portion. Alexander et al. teaches the used of an interface base plate (15) extending between the end portion (80/the bottom end of the diptube) and the bag (14) to isolate the bag from the end portion as seen in Figure 8.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the interface base plate of Alexander et al. onto Pierre's hollow elongated member end portion, in order to provide a hold down device for the elongated member that holds the liner/bag against the bottom of the container without sufficient force to pierce the liner as taught by Alexander et al. in (col. 3, ll. 66-68 onto col. 4, ll. 1-3).

With respect to claim 21, the claimed subject matter "the end portion has a bell shape".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of the end portion of Pierre and Alexander et al. to a bell shaped wall, since it has been held that a change in the shape of the element involves only routine skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1966).

4. Claims 2-5,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierre FR2138685 in view of Alexander et al. 5,435,464 as applied to claim 1 above and further in view of Benedetti WO95/17119.

Pierre-Alexander et al. in combination have taught all the features of the claimed invention except that the elongated member has a plurality of lateral apertures. Benedetti teaches the use of an elongated member (12) having a plurality of lateral apertures (15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Benedetti's teaching onto the elongated member of Pierre and Alexander et al., in order to allow product to flow at different depths within the container.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Application/Control Number: 10/536,975

Page 5

Art Unit: 3754

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754